IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision : October 26, 2006

State of Haryana

....Appellant

versus

Manoj Kumar alias Monu

....Respondent

Coram: Hon'ble Mr. Justice Virender Singh
Hon'ble Mr. Justice A.N. Jindal

Present : Mr. Sidharth Batra, Assistant Advocate General, Haryana.

Virender Singh, J.

Respondent Manoj Kumar alias Monu was charged under section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short 'the Act') for allegedly keeping in his possession 30 kgs of poppy husk (chura post) on 15.7.2003 when he was apprehended by ASI Ramesh Chander and other police officials. As per the allegations he was found sitting on the bags near the office of HAFED by the side of wooden khokha. He has now been acquitted vide impugned judgment of learned Sessions

Judge, Sirsa dated 23.3.2006. Against the said judgment, State of Haryana has preferred the instant appeal along with an application bearing Crl. Misc. No. 508-MA of 2006 under section 378(3) of the Code of Criminal Procedure for grant of leave to appeal.

We have heard Mr. Sidharth Batra, learned Assistant Advocate General and with his assistance have gone through the entire impugned judgment.

Mr. Batra states that the acquittal of the respondent on the point of non-compliance of section 42(1) and 42(2) of the Act is not sustainable as the Investigating Officer without wasting any time had immediately rushed to the spot on receipt of the secret information and therefore even if he has not strictly complied with the provisions of section 42 of the Act, the same would not dent the case of the prosecution.

Mr. Batra then contends that the learned trial court has taken into account the minor discrepancies in the statements of the witnesses which in fact are not that material so as to dislodge the case of the prosecution.

Even if we agree with the submissions made by Mr. Batra with regard to section 42 of the Act considering that the Investigating Officer was not supposed to waste the time after getting secret information, yet we find that the case of the prosecution is failing on other material aspects as

well and the main flaws have been taken into consideration by the learned trial court.

While discarding the case of the prosecution on the point of non-joining of independent witness, the learned trial court while applying the test of care and caution has come to a categoric finding that the conduct of the Investigating Officer in this case is not above board. Another important flaw considered by the learned trial court is that the case property was tempered with as in one of the parcels the number written is Madh No. 46 of 2002 whereas the recovery was effected on July 2003. This, had created a doubt about the genuineness of the prosecution. The story of the prosecution as projected has also been found to be highly suspicious. It is observed that the secret information was to the effect that respondent was selling chura post near the office of HAFED by the side of khokha near village Sakta Khera. The ruqa was sent at about 5.15 PM after the respondent was apprehended. The learned trial court observed that the recovery was effected during the day time and the place of recovery was accessible to all and sundry and therefore, it is not possible that the respondent was selling chura post in an open place visible to all during day time. This flaw has also been considered against the prosecution.

After having rescanned the entire impugned judgment, we do not find any flaw in the approach adopted by the learned trial court while discarding the case of the prosecution on the basis of the aforesaid

infirmities. Therefore, finding no perversity in the impugned judgment, we hereby decline Criminal Misc. No. 508-MA of 2005 for grant of leave.

(Virender Singh)
Judge

(A.N. Jindal)
Judge

October 26, 2006
'dalbir'